

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND MOOD FABRICS

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”), on the one hand, and Mood Apparel Ltd. and Mood Fabric of Los Angeles, LLC (collectively, “Mood Fabrics”), on the other hand. APS&EE and Mood Fabrics shall hereinafter collectively be referred to as the “Parties.”

1.1.2 APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.1.3 APS&EE alleges that Mood Fabrics is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

1.2 Allegations

1.2.1 APS&EE alleges that Mood Fabrics sold faux leather and vinyl fabric, including but not limited to black vinyl with red felt #310559, doe beige #304829, and saddle faux #10388, in the State of California causing users in California to be exposed to hazardous levels of Di(2-ethylhexyl)phthalate (“DEHP”) and Lead without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead and DEHP are each potentially subject to Proposition 65 warning requirements because Lead is listed as known to cause cancer and birth defects or other reproductive harm, and DEHP is listed as known to cause cancer and reproductive toxicity. The products described in this paragraph shall hereinafter collectively be referred to as the “Products.”

1.2.2 On January 14, 2019, APS&EE sent a Sixty-Day Notice of Violation (the “January 14th Notice”), along with a Certificate of Merit, to Mood Fabrics and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to DEHP in the Products. On February 5, 2019, APS&EE sent a Supplemental Sixty-Day Notice of Violation (the “February 5th Notice”), along with a Certificate of Merit, to Mood Fabrics and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to Lead in the Products. The January 14th Notice and February 5th Notice shall hereinafter collectively be referred to as the “Notices.”

1.3 No Admissions

Mood Fabrics denies all allegations in APS&EE’s Notices and maintains that the Products have been, and are, in compliance with all laws, and that Mood Fabrics has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Mood Fabrics but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities under this Agreement.

1.4 Compromise

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

1.5 Effective Date

The “Effective Date” shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party’s counsel.

1.6 Deemed Compliance with Proposition 65

Compliance by Mood Fabrics with this Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP and Lead in the Products.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

As of the Effective Date, Mood Fabrics shall not distribute, supply, sell or offer for sale the Products in California unless (a) the Products contain no more than 1,000 parts per million (0.1%) of DEHP, and no more than 100 parts per million (0.01%) of Lead (“Reformulated Product”), or (b) the Product is distributed, sold, or offered for sale with a clear and reasonable warning as described in Section 2.2. Products that are distributed, sold or offered for sale over the Internet shall comply with Section 2.3

2.2 Proposition 65 Warnings

Whenever a clear and reasonable warning is required under Section 2.1, the warning shall consist of either the Warning or Short-Form Warning described in Sections 2.2.1 and 2.2.2, respectively. However, in the event that the Office of Environmental Health Hazard Assessment (“OEHHA”) promulgates one or more regulations requiring or permitting warning text and/or methods of transmission applicable to the Products that are different than those set forth in this Section, Mood Fabrics shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without further notice to APS&EE or being deemed in breach of this Agreement.

2.2.1 Warning

A warning on the sign, label or shelf tag for the Product with the capitalized and emboldened wording substantially similar to the following (“Warning”).

WARNING: This product can expose you to chemicals, including [Lead or DEHP]¹, which are known to the State of California to cause cancer and birth defects or other reproductive harm.
For more information go to www.P65Warnings.ca.gov.

The Warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the Product is not printed using the color yellow, the symbol may be printed

¹ In accordance with 27 Cal. Code Regs., section 25603, the warning must expressly identify at least one of the Listed Chemicals present in the Product, as applicable.

in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”. The Warning may be given on the label of each unit or on a posted sign, shelf tag or shelf sign for the Product at each point of display for the Product. The Warning shall be displayed with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale.

2.2.2 Short-Form Warning

Alternatively, a warning on the Product or the Label for the Product with the capitalized and emboldened wording substantially similar to the following (“Short-Form Warning”):

WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

“Label” means a display of written, printed or graphic material that is affixed directly to the Product or its immediate container or wrapper. The Short-Form Warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the Label for the Product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning. The Short-Form Warning must be in a type size no smaller than the largest type size used for other consumer information (such as warnings, directions for use and ingredient lists) on the Product. In no case shall the Short-Form Warning appear in a type size smaller than 6-point type.

2.3 Internet Warnings

A Product that is sold by Mood Fabrics on the internet shall also provide the Warning (or the Short-Form Warning, but only if it is also provided on the Product or its Label) by a clearly marked hyperlink on the Product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product. For Products that Mood Fabrics provides for a downstream retailer to sell on the internet, Mood Fabrics shall include an instruction that the retailer provide the warning message by a clearly marked hyperlink on the Product display page,

or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Mood Fabrics shall pay a total civil penalty of two thousand dollars (\$2,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$500.00) for APS&EE.

Mood Fabrics shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$1,500.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$500.00. Mood Fabrics shall remit the payments within ten (10) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

3.2 Reimbursement Of APS&EE’s Fees And Costs

Mood Fabrics shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, Mood Fabrics shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of seventeen thousand dollars (\$17,000.00). Mood Fabrics shall remit the payment within ten (10) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

3.3 Tax Documentation

APS&EE agrees to provide IRS W-9 forms for OEHHA and Law Office of Lucas T. Novak within five (5) days after this Agreement is fully executed by the Parties.

4. RELEASES

4.1 APS&EE's Release Of Mood Fabrics

APS&EE, in consideration of the promises and monetary payments contained herein, on behalf of itself and its shareholders, directors, members, officers, employees, attorneys, experts, representatives, successors and assignees, hereby releases Mood Fabrics, its parents, subsidiaries, affiliated companies, shareholders, directors, members, managers, officers, partners, agents, employees, representatives, attorneys, successors and assignees, as well as its downstream distributors and retailers (collectively, "Released Parties"), from any alleged Proposition 65 violation claims asserted in APS&EE's Notices regarding exposure to Lead or DEHP from the Products sold or supplied by Mood Fabrics in California before and up to the Effective Date.

4.2 Mood Fabrics' Release Of APS&EE

Mood Fabrics, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, and on behalf of the Released Parties, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, representatives, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Mood Fabrics in this matter.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF

EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. SEVERABILITY

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Mood Fabrics shall provide written notice to APS&EE of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

7. NOTICE

All correspondence and notice required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO MOOD FABRICS: H. Kim Sim, Esq. Conkle, Kremer & Engel	TO APS&EE: Lucas Novak, Esq. Law Offices of Lucas T. Novak
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3130 Wilshire Blvd. Suite 500 Santa Monica, CA 90403	8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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8. COUNTERPARTS

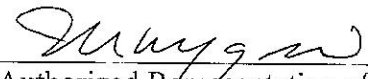
This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

9. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

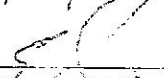
AGREED TO:

Date: 7/25/19

By: 
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: 7/23/19

By: 
Authorized Representative of Mood Apparel Ltd. and Mood Fabric of Los Angeles, LLC

3130 Wilshire Blvd. Suite 500 Santa Monica, CA 90403	8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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AGREED TO:

Date: _____

By: _____
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: 7/23/19 _____

By:  _____
Authorized Representative of Mood Apparel Ltd. and Mood Fabric
of Los Angeles, LLC